

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT WINCHESTER

PHILLIP M. SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case Nos. 4:04-cv 60 / 4:02-cr-45  
*Edgar / Lee*

**JUDGMENT**

In accordance with the accompanying Memorandum and Order filed herewith, it is **ORDERED and ADJUDGED** that the motion for post-conviction relief brought by petitioner Phillip M. Smith under 28 U.S.C. § 2255 is **DENIED and DISMISSED WITH PREJUDICE**.

The Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24(a) of the Federal Rules of Appellate Procedure, and **CERTIFIES** that any appeal from this judgment would not be taken in good faith and would be frivolous. Any application by petitioner Phillip M. Smith for leave to proceed on appeal *in forma pauperis* is **DENIED**.

Furthermore, should petitioner Phillip M. Smith file a notice of appeal from this judgment, such notice of appeal shall be treated as an application for a certificate of appealability which is hereby **DENIED** pursuant to 28 U.S.C. § 2253(c)(2) and Rule 22(b)(1) of the Federal Rules of Appellate Procedure. For the reasons expressed by the Court in its Memorandum and Order, the Court finds that petitioner Phillip M. Smith has not made a substantial showing of the denial of a constitutional right. All of the petitioner's claims are without merit and he has not presented any

claim or substantial question of law about which reasonable jurists could debate. *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

This is a **FINAL JUDGMENT**. The Clerk of Court shall close the record in this case.

SO ORDERED.

ENTER this 16<sup>th</sup> day of January, 2007.

/s/ R. Allan Edgar

R. ALLAN EDGAR  
UNITED STATES DISTRICT JUDGE

/s/ Patricia L. McNutt

PATRICIA L. MCNUTT  
CLERK OF DISTRICT COURT